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CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 523

T. M. DUCHE & SONS, INC., PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The majority and dissenting opinions of the trial court (R. 48-53) are reported in 18 U. S. Cust. Ct. 25. The majority and dissenting opinions of the Court of Customs and Patent Appeals (R. 112-123) are reported as C. A. D. 391 in 83 Treas. Dec. 36 (Weekly Pamphlet No. 51, December 16, 1948).

JURISDICTION

The judgment of the Court of Customs and Patent Appeals was entered November 2, 1948 (R.

125). The petition for a writ of certiorari was filed January 27, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. 1256.

QUESTIONS PRESENTED

Pursuant to Section 336 of the Tariff Act of 1930 the United States Tariff Commission conducted an investigation to ascertain the difference in the cost of production of dried whole eggs, dried egg yolk, and dried egg albumen (white) in the United States and in China, the principal competing country. It reported the results of its investigation to the President of the United States, who thereupon issued a proclamation increasing the rate of duty on the dried egg products. The present suit was brought by an importer of dried egg albumen, alleging the proclamation of the President to be void. The questions presented are: (1) Whether the Customs Court has power to review the facts and conclusions upon which the Tariff Commission based its recommendation to the President that the rate of duties on dried egg products be increased, and if dissatisfied to declare the proclamation void; and (2) whether it was beyond the power delegated to the President under Section 336 to increase the duty on the dried egg products on the basis of the facts shown by the Tariff Commission's investigation.

STATUTE INVOLVED

The pertinent portions of the Tariff Act of 1930 (46 Stat. 590; 52 Stat. 1077; 19 U.S.C. 1336, 1501,

1514, 1515) are set forth in the Appendix, *infra*, pp. 18-29.

STATEMENT

On June 24, 1931, the President of the United States proclaimed that a change in the rate of duty on dried whole eggs, dried egg yolk, and dried egg albumen was necessary to equalize the difference in the costs of production of those products in the United States and in the principal competing country, China, and that the duty which up to that time had been at the rate of 18 cents per pound as provided in Section 1, Par. 713, of the Tariff Act of 1930 (46 Stat. 590, 632; 19 U. S. C. 1001, Par. 713), should be changed to 27 cents per pound. The proclamation was made after an investigation and report by the United States Tariff Commission under the flexible tariff provisions contained in Section 336 of the Tariff Act of 1930, *infra*, pp. 18-23. (R. 103-105). The Commission instituted the investigation on January 23, 1931, in compliance with United States Senate Resolution 389, adopted January 21, 1931 (R. 62-84). Public notice of a hearing was given on March 11, 1931, and a hearing was held on April 16, 1931, at which time interested parties were given an opportunity to be present, to produce evidence, and to be heard (R. 84). As a result of its investigation the Commission found that the duty of 18 cents per pound fixed by the statute did not equalize the difference in the costs of production of the domestic articles and the Chi-

nese articles, and that the duty necessary to equalize such difference, within the limits permitted under the statute, was 27 cents per pound (R. 86-87). It accordingly submitted to the President a report containing its findings (R. 83-87),[1] and its findings were approved by the President in his proclamation of June 24, 1931 (R. 103-105).

In making its investigation, the Commission used the years 1928 to 1930, inclusive, as a representative period of time upon which to base its findings with respect to the difference in the costs of production of domestic dried egg products and those imported from China (R. 85, 96). The Commission found that the production of dried egg products in the United States during the representative period had been very small because the prices of the imported products had, despite the then existing rate of duty, been so low as to leave little incentive to engage in domestic production, although there were large industrial milk-drying facilities in this country which could be readily adapted to the drying of eggs (R. 85, 94). It further found that the determining factor in the cost of producing dried eggs in the United States was the amount paid for the shell eggs, which was more than nine-tenths of the total cost; that a domestic egg-freezing industry had been conducted on a large scale during the rep-

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[1] The Commission attached to its report a comprehensive summary of the information obtained in the investigation (R. 87-103).

resentative period; that a large domestic egg-drying industry would have to buy its eggs in the same regions as those which supplied the domestic egg-freezing industry; and that the breaking-stock eggs used by the latter industry would, if used for egg-drying, furnish a product similar in quality to the dried egg products imported from China (R. 97-98). Accordingly, in order to give a broad basis for domestic raw material cost, the Commission used, in lieu of the prices paid by the limited number of domestic egg driers, the weighted average of farm and central market prices for breaking-stock eggs delivered at the egg-freezing plants (R. 85-86). In computing the domestic operation costs in connection with the drying of eggs, the Commission used the actual operating costs of the domestic establishments engaged in the drying of eggs (R. 85). The Commission recognized that the actual operating costs of the few domestic egg-drying establishments might not give an entirely accurate indication of what operating costs would be if egg-drying were conducted on a much larger scale. It concluded, however, that the costs of domestic breaking-stock eggs amounted to such an unusually high percentage (90 to 95 per cent) of the total costs in the drying of eggs as to make any margin of error in the operating costs a matter of minor importance (R. 101-102).

After the President issued his proclamation, petitioner imported some dried egg albumen at the

port of Boston, Massachusetts, which was assessed with duty at the rate of 27 cents per pound pursuant to the proclamation. Petitioner thereupon filed a protest with the collector of customs at that port under Section 514 of the Tariff Act of 1930, *infra,* pp. 26-28, contending that the proclamation was void on the ground that there had been no industry in the United States engaged in the production of dried egg products during or prior to the time the Tariff Commission made its investigation, and claiming that duty on the importation should have been assessed at the statutory rate of 18 cents per pound. (R. 7-8.) The assessment of duty on the importation at the rate of 27 cents per pound having been affirmed by the collector, the papers were duly transmitted to the Customs Court for decision as required by Section 515 of the Tariff Act, *infra,* pp. 28-29 (R. 9-10). The Customs Court,[2] one judge dissenting, overruled the protest, and held, following the decision of this Court in the case of *United States* v. *George S. Bush & Co., Inc.,* 310 U. S. 371, that it had no jurisdiction to weigh the evidence which was before the Tariff Commission, or to explore the reasons which actuated the

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[2] At the trial of the case there was admitted in evidence the record in the case of *T. M. Duche & Sons* v. *United States,* 13 Cust. Ct. 26, a prior suit between the same parties involving the same kind of merchandise. The record in the prior *Duche* case in turn included the record in the case of *David L. Moss Co., Inc.,* v. *United States,* 26 C. C. P. A. (Customs) 381; 103 F. 2d 395. No other evidence was presented in the case at bar (R. 48-49, 117.)

President in making his proclamation (R. 48-53). On appeal, the Court of Customs and Patent Appeals, one judge dissenting, affirmed the decision of the Customs Court, likewise basing its holding on the decision of this Court in the *Bush* case, *supra* (R. 112-123).

ARGUMENT

Section 336 of the Tariff Act of 1930, *infra,* pp. 18-23, authorizes the Tariff Commission to make investigations for the purpose of ascertaining the difference in the costs of production of a domestic article and a like or similar foreign article when produced in the principal competing country. That section prescribes that in the course of the investigation the Commission shall hold a hearing and give reasonable public notice thereof, and shall afford reasonable opportunity for persons interested to be present, to produce evidence, and to be heard at such hearing. The Commission is required to report the information thus obtained to the President and to specify in its report such changes in the rates of duties or such changes in classification or in valuation basis as it finds to be necessary to equalize the costs of production of the domestic and the foreign article. The section then empowers the President to make the suggested changes in rates (within 50% limits), in classification, or in valuation basis, if in his judgment such changes are shown by the investigation to be necessary to equalize the costs of production.

Petitioner makes no contention in the case at bar that the Tariff Commission failed to observe any of the procedural requirements of Section 336 with respect to the holding of a hearing, the giving of public notice thereof, or the affording of opportunity to interested parties to be present and to be heard at the hearing.[3] Petitioner asserts, nevertheless, although not categorically, that the proclamation here involved is void because Section 336 contemplates that there must be an industry producing a domestic article commercially in the United States before it may be made the subject of Presidential action under that section, that there was no such industry producing dried egg products commercially in the United States during the representative period used as a basis for the investigation,[4] and that it was, therefore, beyond the delegated power of the President to make legal findings of domestic costs of production for dried egg products (Pet. 5-6).

The majorities of both the Customs Court and the Court of Customs and Patent Appeals rejected petitioner's contention, holding that Section 336 may not be construed as requiring that a domestic article be produced commercially by an industry in the United States before it may become

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[3] The Tariff Commission's report and the proclamation both show that all of these statutory requirements were observed (R. 84, 104).

[4] In the court below petitioner did not deny that dried egg albumen was produced in the United States during the representative period (R. 119).

the subject of Presidential action thereunder, that all of the jurisdictional requirements of Section 336 had been observed by the Tariff Commission in this case, and that this Court's ruling in the case of *United States* v. *George S. Bush & Co., Inc.,* 310 U. S. 371, was dispositive of the issue in the case at bar (R. 48-53, 112-123).[5]

In the case of *United States* v. *George S. Bush & Co., Inc., supra,* this Court cited *Norwegian Nitrogen Products Co.* v. *United States,* 288 U. S. 294, to the effect that the exercise by the President of the power which Congress has delegated to him for over a century under tariff statutes such as Section 336 is but one stage of the legislative process, and stated as follows (310 U. S. 379-380): "And the judgment of the President that on the facts, adduced in pursuance of the procedure prescribed by Congress, a change of rate is necessary is no more subject to judicial review under this statutory scheme than if Congress itself had exercised that judgment." The *Bush* case involved a proclamation issued by the President under Section 336, *infra,* pp. 18-23, which

[5] The prior conclusion of a majority of the Court of Customs and Patent Appeals in the case of *David L. Moss & Co., Inc.,* v. *United States,* 26 C. C. P. A. 381 (Customs); 103 F. 2d 395, that the Customs Court had jurisdiction to determine whether there was any substantial evidence before the President to support the findings made by him in the proclamation here involved, was reached before this Court rendered its decision in the *Bush* case, and was disavowed by the majority of that court in the case at bar both on the ground that it was unsound and because it was deemed to be at variance with the *Bush* decision (R. 120, 123).

changed the valuation basis and the rate of duty on canned clams. In computing the foreign costs of production of canned clams in the principal competing country, Japan, the Tariff Commission while converting Japanese yen into United States dollars, employed a rate of currency exchange which had not prevailed during the representative period used as a basis for its investigation. The result of the Commission's computation was adopted by the President in his proclamation. The importer contended that the method used by the Commission to convert the Japanese currency was illegal, and that the President's adoption of the Commission's computation based on the illegal conversion of Japanese currency, made the proclamation void. On review, this Court held that conversion of currency was a matter left by Congress to the judgment of the President, and that the method employed by him to accomplish the conversion was not subject to judicial review.

Petitioner asserts that the decision of this Court in the *Bush* case is not controlling in the case at bar, urging two reasons therefor which, in substance, are (1) the issuance of the proclamation was beyond the delegated power of the President under Section 336, whereas the *Bush* decision was concerned only with the discretion vested in the President by that section, and (2) the *Bush* case having been instituted under Section 501 of the Tariff Act, *infra,* pp. 24-26, the decision of this Court therein does not control the issue here pre-

sented because the case at bar was brought under Section 514 of that Act, *infra*, pp. 26-28, which contains provisions, not found in Section 501, permitting judicial review of orders and findings. We submit that there is no merit in either of petitioner's contentions.

1. Petitioner's challenge to the validity of the proclamation is an ingenious one and rests entirely on a narrow and strained construction of Section 336 (Pet. 5, 6). The gist of petitioner's contention seems to be that Section 336 must be construed to preclude the Tariff Commission and the President from finding the costs of production of a domestic article, as defined in that section, unless the domestic article is produced commercially by an industry in the United States during the representative period used in the investigation. Applying the facts of this case to its own construction, petitioner seems to take the position that dried egg products were not produced commercially by an industry in the United States during the representative period used, which made the action of the Tariff Commission tantamount to the finding of the costs of production of a non-existent domestic article, and that the action of the President in adopting in his proclamation the Commission's finding as to the domestic costs of production of dried egg products, amounted, so far as Section 336 is concerned, to no more than an attempt to equalize the costs of production between an imaginary domestic

article and an existing foreign article. Thus, on the hypothesis that Section 336 must be given the narrow construction contended for, petitioner reaches the conclusion that the action of the President in issuing his proclamation of June 24, 1931, exceeded the power delegated to him by Congress because in that proclamation he found the costs of production of a domestic article when, within the meaning of Section 336, no such article existed. This labored conclusion is then used by petitioner as a basis for its contention that the Tariff Commission and the President failed to observe all of the jurisdictional requirements of Section 336, and that the decision of this Court in the *Bush* case, holding that the legislative power of the President under Section 336 is not subject to judicial review, does not control the case at bar.

We find no language in Section 336 which warrants the construction placed by petitioner upon the section. In defining the term "domestic article", Congress provided in Section 336 that: "For the purpose of this section—(1) The term 'domestic article' means an article wholly or in part the growth or product of the United States." Thus, the Congress when expressly defining the term "domestic article" added no conditions which would abridge its normal meaning, and accordingly did not include in its definition a condition that an otherwise domestic article would be without the ambit of Section 336 should there be no industry

producing it commercially in the United States. To diminish the scope of its normal meaning by adding to the Congressional definition the restrictive language which petitioner's construction comprehends, would, we believe, fly in the face of the intention of Congress and would prevent the President from effectuating the full purpose of Section 336, especially in cases such as this (R. 94) where the disappearance of an industry or the deceleration of its activity is linked so closely to the low production costs and consequent low prices of a competing foreign product.

In the circumstances, it is clear that the term "domestic article" as used in Section 336 encompasses the domestic dried egg products specified and used for comparative purposes in the President's proclamation of June 24, 1931. And we submit that the matter of whether there was a sufficient production of dried egg products by an industry in the United States to warrant the Tariff Commission in making its findings, with respect to domestic costs of production, which entered into the President's proclamation, is a matter which was left by Congress to the judgment of the President, and is no different in principle from the matter of converting currency which this Court held in *United States* v. *Bush, supra,* had been left to the President's discretion.

Petitioner urges that the decision of the court below is in conflict with the decisions of this Court (Pet. 6) in the cases of *Muser* v. *Magone,* 155 U. S.

240; *Waite* v. *Macy*, 246 U. S. 606; *Opp Cotton Mills, Inc.* v. *Administrator*, 312 U. S. 126; *Panama Refining Co.* v. *Ryan*, 293 U. S. 388; and *Crowell* v. *Benson*, 285 U. S. 22. These cases are all inapposite, and do not require extended discussion. The *Magone* and *Macy* cases were both brought to this Court's attention in the *Bush* case (310 U. S. at 375), and apparently were not considered to be in conflict with the conclusions there reached. The other three cases cited by petitioner involved the constitutional power of the Congress to delegate legislative power. That issue has been resolved in the affirmative by this Court with respect to Section 336. *Hampton & Co.* v. *United States*, 276 U. S. 394. Furthermore, the other three cases were concerned with legal rights.[6] But this Court has held that "No one has a legal right to the maintenance of an existing rate or duty." *Norwegian Nitrogen Products Co.* v. *United States*, *supra*, p. 318; *United States* v. *Bush*, *supra*, p. 379.

2. Petitioner contends that the case at bar is distinguishable from the *Bush* case because it was brought as a protest proceeding under Section 514 of the Tariff Act of 1930, *infra*, pp. 26-28, in which the provision authorizing judicial review of decisions of collectors of customs is amplified by the language "including the legality of all orders and

[6] The judicial review provided for in Section 10(a) of the Administrative Procedure Act (60 Stat. 237, 243; 5 U.S.C. 1009) likewise contemplates the correction of transgressed legal rights.

findings entering into the same,"[7] whereas the *Bush* case was a reappraisement proceeding instituted under Section 501 of the Tariff Act, *infra*, pp. 24-26, in which the language providing for judicial review of decisions of customs officers appraising imported merchandise does not specify that the judicial review shall include the legality of orders and findings entering into such decisions (Pet. 6-7).[8] In other words, petitioner would avoid the impact of the *Bush* decision in the case at bar by

[7] On this point, petitioner seems to make the broad contention that Section 514 permits judicial review of the facts and reasons which actuate the President in making a proclamation under Section 336, as well as the modes of procedure which Section 336 requires the Tariff Commission to observe before the delegated legislative power of the President may be brought into action.

[8] It will be observed that the business of the Customs Court consists generally of two classes of cases, i.e., classification cases and reappraisement cases. In cases brought under Section 514, *infra*, pp. 26-28, the court determines the validity of decisions of collectors of customs as to the rate and amount of duties payable, and as to all other exactions of whatever character within the jurisdiction of the Secretary of the Treasury, as well as decisions refusing to pay drawback claims. In cases brought under Section 501, *infra*, pp. 24-26, it determines the validity of decisions of customs appraisers as to the value of imported merchandise and as to the statutory valuation basis to be used in appraising it.

In the *Bush* case, the proclamation changed the basis of valuation of the imported merchandise ~~as well as the rate~~ of duties imposed thereon, and the proceeding was brought in the Customs Court under Section 501 of the Tariff Act, the challenge to the validity of the proclamation being solely in the form of an attack on the validity of the customs appraiser's action in determining the value of the merchandise under the changed valuation basis. In the case at bar, the proclamation merely increased the rate of duties, and the proceeding challenging the validity of the proclamation was brought in the Customs Court under Section 514 of the Tariff Act, in the form of an attack on the validity of the decision of the collector of customs in assessing duties on the merchandise at the increased rate.

assuming that this Court's decision in that case hinged on the absence in Section 501, *supra,* of express language providing for judicial review of "the legality of orders and findings entering into the [decisions of customs appraisers.]" We submit that the contention is plainly refuted by this court's decision in the case of *Norwegian Nitrogen Products Co.* v. *United States, supra,* for that case was brought under Section 514,[9] and it was in that case that this Court laid down the rule (which it approved in the *Bush* case) that the exercise by the President of his delegated powers under statutes such as Section 336 is not subject to judicial review if the prescribed forms of legislation have been regularly observed (288 U. S. 318). Petitioner can scarcely assume that this Court, when deciding the *Norwegian Nitrogen* case, would have made the above pronouncement in its opinion had it considered the language of the statute under which the suit was brought as being broad enough to authorize judicial review of the exercise by the President of the legislative power delegated to him by Section 336.

Furthermore, the adoption of the construction of Section 514 for which petitioner argues would attribute to the Congress the intention of withholding

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[9] The *Norwegian Nitrogen* case was brought under Section 514 of the Tariff Act of 1922 (42 Stat. 858, 969-970), which contained language identical to that now contained in Section 514 of the 1930 Act with respect to judicial review of orders and findings entering into the decisions of collectors of customs.

from the Customs Court jurisdiction to review the President's findings in cases wherein he acts under Section 336 to change the valuation basis of imported merchandise for the purpose of equalizing the difference in costs of production, and at the same time granting that jurisdiction in cases wherein he changes the rate of duties to accomplish the same purpose. We believe the bare statement of the result warrants rejection of petitioner's asserted construction of Section 514. In any event, the decision of this Court in the *Norwegian Nitrogen* case is plainly inconsistent with the construction which petitioner at this late date seeks to have placed on the section.

CONCLUSION

The decision of the court below is clearly correct, and is not in conflict with any decision of this Court. Further review of the case is not warranted, and the petition for a writ of certiorari should, therefore, be denied.

Respectfully submitted.

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MARCH 1949.

APPENDIX

The pertinent provisions of the Tariff Act of 1930, as amended (46 Stat. 590; 52 Stat. 1077; 19 U. S. C. 1336, 1501, 1514, 1515) read as follows:

SEC. 336. EQUALIZATION OF COSTS OF PRODUCTION

(a) Change of Classification or Duties.—In order to put into force and effect the policy of Congress by this Act intended, the commission (1) upon request of the President, or (2) upon resolution of either or both Houses of Congress, or (3) upon its own motion, or (4) when in the judgment of the commission there is good and sufficient reason therefor, upon application of any interested party, shall investigate the differences in the costs of production of any domestic article and of any like or similar foreign article. In the course of the investigation the commission shall hold hearings and give reasonable public notice thereof, and shall afford reasonable opportunity for parties interested to be present, to produce evidence, and to be heard at such hearings. The commission is authorized to adopt such reasonable procedure and rules and regulations as it deems necessary to execute its functions under this section. The commission shall report to the President the results of the investigation and its findings with respect to such differences in costs of production. If the commission finds it shown by the investigation that the duties expressly fixed by statute do not equalize the differences in the cost of production of the domestic arti-

cle and the like or similar foreign article when produced in the principal competing country, the commission shall specify in its report such increases or decreases in rates of duty expressly fixed by statute (including any necessary change in classification) as it finds shown by the investigation to be necessary to equalize such differences. In no case shall the total increase or decrease of such rates of duty exceed 50 per centum of the rates expressly fixed by statute.

(b) Change to American Selling Price.—If the commission finds upon any such investigation that such differences can not be equalized by proceeding as hereinbefore provided, it shall so state in its report to the President and shall specify therein such ad valorem rates of duty based upon the American selling price (as defined in section 402(g)) of the domestic article, as it finds shown by the investigation to be necessary to equalize such differences. In no case shall the total decrease of such rates of duty exceed 50 per centum of the rates expressly fixed by statute, and no such rate shall be increased.

(c) Proclamation By The President.—The President shall by proclamation approve the rates of duty and changes in classification and in basis of value specified in any report of the commission under this section, if in his judgment such rates of duty and changes are shown by such investigation of the commission to be necessary to equalize such differences in costs of production.

(d) Effective Date Of Rates And Changes.—Commencing thirty days after the date of any presidential proclamation of approval the increased or decreased rates of duty and changes in classification or in basis of value specified in the report of the commission shall take effect.

(e) Ascertainment Of Differences In Costs Of Production.—In ascertaining under this section the differences in costs of production, the commission shall take into consideration, in so far as it finds practicable:

(1) In The Case Of A Domestic Article.—(A) The cost of production as hereinafter in this section defined; (B) transportation costs and other costs incident to delivery to the principal market or markets of the United States for the article; and (C) other relevant factors that constitute an advantage or disadvantage in competition.

(2) In The Case Of A Foreign Article.—(A) The cost of production as hereinafter in this section defined, or, if the commission finds that such cost is not readily ascertainable, the commission may accept as evidence thereof, or as supplemental thereto, the weighted average of the invoice prices or values for a representative period and/or the average wholesale selling price for a representative period (which price shall be that at which the article is freely offered for sale to all purchasers in the principal market or markets of the principal competing country or countries in the

ordinary course of trade and in the usual wholesale quantities in such market or markets); (B) transportation costs and other costs incident to delivery to the principal market or markets of the United States for the article; (C) other relevant factors that constitute an advantage or disadvantage in competition, including advantages granted to the foreign producers by a government, person, partnership, corporation, or association in a foreign country.

(f) Modification Of Changes In Duty.—Any increased or decreased rate of duty or change in classification or in basis of value which has taken effect as above provided may be modified or terminated in the same manner and subject to the same conditions and limitations (including time of taking effect) as is provided in this section in the case of original increases, decreases, or changes.

(g) Prohibition Against Transfers From The Free List To The Dutiable List Or From The Dutiable List To The Free List.—Nothing in this section shall be construed to authorize a transfer of an article from the dutiable list to the free list or from the free list to the dutiable list, nor a change in form of duty. Whenever it is provided in any paragraph of Title I of this Act, or in any amendatory Act, that the duty or duties shall not exceed a specified ad valorem rate upon the articles provided for in such paragraph, no rate determined under the provisions of this section upon

such articles shall exceed the maximum ad valorem rate so specified.

(h) Definitions.—For the purpose of this section—

(1) The term "domestic article" means an article wholly or in part the growth or product of the United States; and the term "foreign article" means an article wholly or in part the growth or product of a foreign country.

(2) The term "United States" includes the several States and Territories and the District of Columbia.

(3) The term "foreign country" means any empire, country, dominion, colony, or protectorate, or any subdivision or subdivisions thereof (other than the United States and its possessions).

(4) The term "cost of production", when applied with respect to either a domestic article or a foreign article, includes, for a period which is representative of conditions in production of the article: (A) The price or cost of materials, labor costs, and other direct charges incurred in the production of the article and in the processes or methods employed in its production; (B) the usual general expenses, including charges for depreciation or depletion which are representative of the equipment and property employed in the production of the article and charges for rent or interest which are representative of the cost of obtaining capital or instru-

ments of production; and (C) the cost of containers and coverings of whatever nature, and other costs, charges, and expenses incident to placing the article in condition packed ready for delivery.

(i) Rules And Regulations Of President.—The President is authorized to make all needful rules and regulations for carrying out his functions under the provisions of this section.

(j) Rules And Regulations Of Secretary Of Treasury.—The Secretary of the Treasury is authorized to make such rules and regulations as he may deem necessary for the entry and declaration of foreign articles of the class or kind of articles with respect to which a change in basis of value has been made under the provisions of subdivision (b) of this section, and for the form of invoice required at time of entry.

(k) Investigations Prior To Enactment Of Act.—All uncompleted investigations instituted prior to the approval of this Act under the provisions of Section 315 of the Tariff Act of 1922, including investigations in which the President has not proclaimed changes in classification or in basis of value or increases or decreases in rates of duty, shall be dismissed without prejudice; but the information and evidence secured by the commission in any such investigation may be given due consideration in any investigation instituted under the provisions of this section. [46 Stat. 701; 19 U.S.C. 1336.]

SEC. 501. NOTICE OF APPRAISEMENT; REAPPRAISEMENT

(a) The collector shall give written notice of appraisement to the consignee, his agent, or his attorney, if (1) the appraised value is higher than the entered value, or (2) a change in the classification of the merchandise results from the appraiser's determination of value. The decision of the appraiser shall be final and conclusive upon all parties unless a written appeal for a reappraisement is filed with or mailed to the United States Customs Court by the collector within sixty days after the date of the appraiser's report, or filed by the consignee or his agent with the collector within thirty days after the date of personal delivery, or if mailed the date of mailing of written notice of appraisement to the consignee, his agent, or his attorney. No such appeal filed by the consignee or his agent shall be deemed valid, unless he has complied with all the provisions of this chapter relating to the entry and appraisement of such merchandise. Every such appeal shall be transmitted with the entry and the accompanying papers by the collector to the United States Customs Court and shall be assigned to one of the judges, who shall in every case, notwithstanding that the original appraisement may for any reason be held invalid or void and that the merchandise or samples thereof be not available for examination, after affording the parties an opportunity to be heard on the merits, determine the value of the merchandise from the evidence in the

entry record and that adduced at the hearing. Reasonable notice shall be given to the importer and to the person designated to represent the Government in such proceedings of the time and place of the hearing, at which the parties and their attorneys shall have an opportunity to introduce evidence and to hear and cross-examine the witnesses of the other party and to inspect all samples and all papers admitted or offered as evidence. In finding such value affidavits and depositions of persons whose attendance cannot reasonably be had, price lists and catalogues, reports or depositions of consuls, customs agents, collectors, appraisers, assistant appraisers, examiners, and other officers of the Government may be admitted in evidence. Copies of official documents, when certified by an official duly authorized by the Secretary of the Treasury, may be admitted in evidence with the same force and effect as original documents. The value found by the appraiser shall be presumed to be the value of the merchandise and the burden shall rest upon the party who challenges its correctness to prove otherwise.

(b) The judge shall, after argument on the part of any of the interested parties requesting to be heard, render his decision in writing, together with a statement of the reasons therefor and of the facts on which the decision is based. Such decision shall be final and conclusive upon all parties unless within thirty days from the date of the filing of the decision with the collector an application for its review

shall be filed with or mailed to the United States Customs Court by the collector or other person authorized by the Secretary of the Treasury, and a copy of such application mailed to the consignee, or his agent or attorney, or filed by the consignee, or his agent or attorney, with the collector, by whom the same shall be forthwith forwarded to the United States Customs Court. Every such application shall be assigned by the court to a division of three judges, who shall consider the case upon the samples of the merchandise, if there be any, and the record made before the single judge, and, after hearing argument on the part of any of the interested parties requesting to be heard, shall affirm, reverse, or modify the decision of the single judge or remand the case to the single judge for further proceedings, and shall state its action in a written decision, to be forwarded to the collector, setting forth the facts upon which the finding is based and the reasons therefor. The decision of the United States Customs Court shall be final and conclusive upon all parties unless an appeal shall be taken by either party to the Court of Customs and Patent Appeals upon a question or questions of law only within the time and in the manner provided by section 198 of the Judicial Code, as amended. [46 Stat. 730; 52 Stat. 1084; 19 U.S.C. 1501.]

SEC. 514. PROTEST AGAINST COLLECTOR'S DECISIONS

Except as provided in subdivision (b) of section 516 of this Act (relating to protests by

American manufacturers, producers, and wholesalers), all decisions of the collector, including the legality of all orders and findings entering into the same, as to the rate and amount of duties chargeable, and as to all exactions of whatever character (within the jurisdiction of the Secretary of the Treasury), and his decisions excluding any merchandise from entry or delivery, under any provision of the customs laws, and his liquidation or reliquidation of any entry, or refusal to pay any claim for drawback, or his refusal to reliquidate any entry for a clerical error discovered within one year after the date of entry, or within sixty days after liquidation or reliquidation when such liquidation or reliquidation is made more than ten months after the date of entry, shall, upon the expiration of sixty days after the date of such liquidation, reliquidation, decision, or refusal, be final and conclusive upon all persons (including the United States and any officer thereof), unless the importer, consignee, or agent of the person paying such charge or exaction, or filing such claim for drawback, or seeking such entry or delivery, shall, within sixty days after, but not before such liquidation, reliquidation, decision, or refusal, as the case may be, as well in cases of merchandise entered in bond as for consumption, file a protest in writing with the collector setting forth distinctly and specifically, and in respect to each entry, payment, claim, decision, or refusal, the reasons for the objection thereto. The reliquidation of an entry shall not open such entry so that a pro-

test may be filed against the decision of the collector upon any question not involved in such reliquidation. [46 Stat. 734; 19 U.S.C. 1514.]

SEC. 515 SAME.

Upon the filing of such protest the collector shall within ninety days thereafter review his decision, and may modify the same in whole or in part and thereafter remit or refund any duties, charge, or exaction found to have been assessed or collected in excess, or pay any drawback found due, of which notice shall be given as in the case of the original liquidation, and against which protest may be filed within the same time and in the same manner and under the same conditions as against the original liquidation or decision. If the collector shall, upon such review, affirm his original decision, or if a protest shall be filed against his modification of any decision, and, in the case of merchandise entered for consumption, if all duties and charges shall be paid, then the collector shall forthwith transmit the entry and the accompanying papers, and all the exhibits connected therewith, to the United States Customs Court for due assignment and determination, as provided by law. Such determination shall be final and conclusive upon all persons, and the papers transmitted shall be returned, with the decision and judgment order thereon, to the collector, who shall take action accordingly, except in cases in which an appeal shall be filed in the United States Court of Customs

and Patent Appeals within the time and in the manner provided by law. [46 Stat. 734; 19 U.S.C. 1515.]

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